

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

JOHN EDWARD MILLER

§

v.

§ CIVIL ACTION NO. 5:10cv70

UNION PACIFIC RAILROAD, ET AL.

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff John Edward Miller, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The named Defendants in the lawsuit are the Union Pacific Railroad and the county jail in Texarkana, Texas, which is the Bowie County Jail.

In his lawsuit, Miller says that he was in the Bowie County Jail in September of 2005 when a train derailed with chemicals in one of the compartment cars. He says that these chemicals created fumes which spilled into the jail and damaged his vision. Although news reports said that the jail had been evacuated, Miller says, he and other inmates were left inside.

The Magistrate Judge ordered Miller to file an amended complaint, which he did; this amended complaint again gave the date of the incident as September of 2005 and complained that “toxic fumes” were released into the jail through the air conditioning system.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed as barred by the statute of limitations, in that the incident occurred in 2005 and Miller signed his lawsuit in April of 2010. Miller received a copy of this Report on October 4, 2010,

but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings in the cause along with the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 16) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous and for failure to state a claim upon which relief may be granted, in that it is barred by the statute of limitations. It is further

ORDERED that any and all other motions which may be pending in this cause are hereby DENIED.

**SIGNED this 24th day of November, 2010.**



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DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE